

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

BRIAN FLUG,)	
)	
Plaintiff,)	4:07CV3070
)	
v.)	
)	
CABELA'S, Inc.,)	MEMORANDUM AND ORDER ON
)	DEFENDANT'S MOTION TO DISMISS
Defendant.)	
)	

On March 15, 2007, the plaintiff, Brian Flug, filed a three-count complaint against Defendant Cabela's, Inc. (See generally Compl., filing 1.) Count II of the complaint alleges that the "Defendant failed and otherwise refused to provide reasonable accommodation to the Plaintiff and/or failed to engage in meaningful communications with the Plaintiff regarding reasonable accommodation" in violation of state and federal law. (See id. ¶ 19.) On May 9, 2007, the defendant filed a motion to dismiss Count II of the complaint. (See filing 11.) On May 22, 2007, the plaintiff filed a four-count amended complaint, omitting the allegations set forth in Count II of the original complaint. (See generally Am. Compl., filing 14.) On June 12, 2007, the defendant filed an answer to the amended complaint. (See filing 16.)

I find that the amended complaint is now the operative complaint in this case, and the defendant's motion to dismiss Count II of the original complaint will be denied as moot. I note parenthetically, however, that the plaintiff failed to move for leave to amend his complaint, and there is no indication that the plaintiff amended his complaint "by written consent" of the defendant. See Fed. R. Civ. P. 15(a). See also NECivR 15.1 (setting forth the requirements for motions to amend pleadings). In the future, the plaintiff should follow the applicable rules.

IT IS ORDERED that the defendant's motion to dismiss, filing 11, is denied as moot.

Dated June 20, 2007.

BY THE COURT

s/ Warren K. Urbom
United States Senior District Judge